

Proposition 36      Full Text

SECTION 1. Title

This Act shall be known and may be cited as the "Substance Abuse and Crime Prevention Act of 2000."

SECTION 2. Findings and Declarations

The People of the State of California hereby find and declare all of the following:

(a) Substance abuse treatment is a proven public safety and health measure.

Non-violent, drug dependent criminal offenders who receive drug treatment are much less likely to abuse drugs and commit future crimes, and are likelier to live healthier, more stable and more productive lives.

(b) Community safety and health are promoted, and taxpayer dollars are saved, when

nonviolent persons convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration.

(c) In 1996, Arizona voters by a 2-1 margin passed the Drug Medicalization,

Prevention, and Control Act which diverted non-violent drug offenders into drug

treatment and education services rather than incarceration. According to a Report

Card prepared by the Arizona Supreme Court, the Arizona law: is "resulting in safer

communities and more substance abusing probationers in recovery," has already saved

state taxpayers millions of dollars, and is helping more than 75% of program

participants to remain drug free.

SECTION 3. Purpose and Intent

The People of the State of California hereby declare their purpose and intent in enacting this Act to be as follows:

(a) To divert from incarceration into community-based substance abuse treatment programs non-violent defendants, probationers and parolees charged with simple drug possession or drug use offenses;

(b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration – and re-incarceration – of non-violent drug users who would be better served by community-based treatment; and

(c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

SECTION 4. Section 1210 is added to the Penal Code to read:

1210. Definitions.

As used in Penal Code sections 1210.1 and 3063.1, and Division 10.8 of the Health and Safety Code:

(a) The term "non-violent drug possession offense" means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, or the offense of being under the influence of a controlled substance in violation of Health and Safety Code section 11550. The term "non-violent drug possession offense" shall not include

possession for sale, production, or manufacturing of any controlled substance.

(b) The terms "drug treatment program" or "drug treatment" mean a licensed and/or certified community drug treatment program which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The terms "drug treatment program" or "drug treatment" shall not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender or (2) any activity similar to those listed in (d)(1) above.

SECTION 5. Section 1210.1 is added to the Penal Code to read:

1210.1 Possession Of Controlled Substances; Probation; Exceptions.

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a non-violent drug possession offense shall receive probation.

As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose as a condition of probation participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a non-violent drug possession offense who is reasonably able to do so to contribute to the cost of their own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to:

(1) Any defendant who has previously been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7, unless the non-violent drug possession offense occurred after a period of 5 years in which the defendant remained free of both prison custody and the commission of an offense which results in (a) a felony conviction other than a non-violent drug possession offense or (b) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more non-violent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

(1) a (A) While using a firearm, unlawfully possesses any amount of substance containing either cocaine base, cocaine, heroin, methamphetamine, or (2) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

cocaine (B) While using a firearm, is unlawfully under the influence of base, cocaine, heroin, methamphetamine or phencyclidine.

probation. (4) Any defendant who refuses drug treatment as a condition of probation.

violent drug (5) Any defendant who (a) has two separate convictions for non-  
drug possession offenses (b) has participated in two separate courses of  
drug treatment pursuant to subdivision (a) and (c) is found by the court,  
by clear and convincing evidence, to be unamenable to any and all forms of  
available drug treatment. Notwithstanding any other provision of law, the trial  
court shall sentence such defendants to 30 days in jail.

the probation (c) Within 7 days of an order imposing probation under subdivision (a),  
provide drug department shall notify the drug treatment provider designated to  
treatment under subdivision (a). Within 30 days of receiving that  
notice, the treatment provider shall prepare a treatment plan and forward it to the probation  
department.

program, the On a quarterly basis after the defendant begins the drug treatment  
treatment provider shall prepare and forward a progress report to the  
probation department.

provider (1) If at any point during the course of drug treatment the treatment  
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notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug related programs, the probation department may move the court to terms of probation to ensure that defendant receives the alternative treatment or program.

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(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he is amenable, the court may revoke probation.

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(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Dismissal of charges upon successful completion of drug treatment.

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(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the

defendant. In addition, the arrest on which the conviction was based shall be deemed to have never occurred. Except as provided in subdivision (d)(2) and (d)(3) below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment or information pursuant to subdivision (d)(1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Penal Code section 12021.

(3) Except as provided below, after an indictment or information is dismissed pursuant to subdivision (d)(1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information or indictment under this section does not relieve a defendant of the obligation to

disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(e) Violation of Probation.

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug related probation violations.

Where a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a non-violent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug related probation violations.

(A) Where a defendant receives probation under subdivision (a), and violates that probation either by being arrested for a non-violent drug possession offense or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court



proved and the defendant shall revoke probation if the alleged probation violation is state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

and for (B) Where a defendant receives probation under subdivision (a), for a the second time violates that probation either by being arrested related non-violent drug possession offense, or by violating a drug-revoke condition of probation, and the state moves for a second time to probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a danger preponderance of the evidence either that the defendant poses a determining to the safety of others or is unamenable to drug treatment. In may whether a defendant is unamenable to drug treatment, the court committed consider, to the extent relevant, whether the defendant (1) has continually a serious violation of rules at the drug treatment program, (2) has from the repeatedly committed violations of program rules that inhibit the or alter the defendant's ability to function in the program, or (3) has refused to participate in the program or asked to be removed the drug treatment plan.

and for (C) Where a defendant receives probation under subdivision (a), a the third time violates that probation either by being arrested for

related non-violent drug possession offense, or by violating a drug-  
revoke condition of probation, and the state moves for a third time to  
probation, the court shall conduct a hearing to determine whether  
probation shall be revoked. If the alleged probation violation is  
proved, defendant is not eligible for continued probation under  
subdivision (a).

(D) Where a defendant on probation at the effective date of this  
act for a non-violent drug possession offense violates that probation either  
by being arrested for a non-violent drug possession offense, or by  
violating a drug-related condition of probation, and the state moves to  
revoke probation, the court shall conduct a hearing to determine if  
alleged shall be revoked. The trial court shall revoke probation if the  
preponderance of probation violation is proved and the state proves by a  
others. If the evidence that the defendant poses a danger to the safety of  
treatment the court does not revoke probation, it may modify probation and  
impose as an additional condition participation in a drug  
program.

(E) Where a defendant on probation at the effective date of this  
act for a non-violent drug possession offense violates that probation a  
second time either by being arrested for a non-violent drug possession  
offense, or by violating a drug-related condition of probation, and the state  
moves for a second time to revoke probation, the court shall conduct a  
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(F) Where a defendant on probation at the effective date of this non-violent drug offense violates that probation a third time being arrested for a non-violent drug possession offense, or by a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, defendant is not eligible for continued probation under subdivision (a).

SECTION 6. Section 3063.1 is added to the Penal Code to read:

3063.1. Possession Of Controlled Substances; Parole; Exceptions.

in subdivision

(a) Notwithstanding any other provision of law, and except as provided

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(b), parole may not be suspended or revoked for commission of a non-violent drug possession offense or for violating any drug-related condition of parole.

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As an additional condition of parole for all such offenses or violations,

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Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a non-violent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of their own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7.

(2) Any parolee who, while on parole commits one or more non-violent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within 7 days of a finding that the parolee has either committed a non-violent drug possession offense or violated any drug-related condition of parole, the Parole

Authority shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare a

drug treatment plan and forward it to the Parole Authority and to the California

Department of Corrections Parole Division Agent responsible for supervising the

parolee. On a quarterly basis after the parolee begins drug treatment, the treatment

provider shall prepare and forward a progress report to these entities and individuals.

(1) If at any point during the course of drug treatment the treatment provider

notifies the Parole Authority that the parolee is unamenable to the drug

programs, treatment provided, but amenable to other drug treatments or related  
that the the Parole Authority may act to modify the terms of parole to ensure  
parolee receives the alternative drug treatment or program.

provider (2) If at any point during the course of drug treatment the treatment  
drug notifies the Parole Authority that the parolee is unamenable to the  
Authority treatment provided and all other forms of drug treatment, the Parole  
revoked may act to revoke parole. At the revocation hearing, parole may be  
there is a unless the parolee proves by a preponderance of the evidence that  
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required condition (3) Drug treatment services provided by subdivision (a) as a  
additional of parole may not exceed 12 months, provided, however, that  
to six aftercare services as a condition of probation may be required for up  
months.

(d) Violation of Parole.

subdivision, the (1) If parole is revoked pursuant to the provisions of this  
without defendant may be incarcerated pursuant to otherwise applicable law  
regard to the provisions of this section.

(2) Non-drug related parole violations.

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(3) Drug related parole violations.

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(A) Where a parolee receives drug treatment under subdivision  
during the course of drug treatment violates parole either by  
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drug-related condition of parole, and the Parole Authority acts to  
parole, a hearing shall be conducted to determine whether parole  
revoked. Parole shall be revoked where the parole violation is  
and a preponderance of the evidence establishes that the parolee  
danger to the safety of others. If parole is not revoked, the  
parole may be intensified to achieve the goals of drug treatment.

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(B) Where a parolee receives drug treatment under subdivision  
during the course of drug treatment for the second time violates  
parole either by being arrested for a non-violent drug possession  
or by violating a drug-related condition of parole, and the Parole  
Authority acts for a second time to revoke parole, a hearing shall  
conducted to determine whether parole shall be revoked. If the  
parole violation is proved the parolee is not eligible for continued  
under any provision of this section and may be re-incarcerated.

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(C) Where a parolee already on parole at the effective date of this act violates that parole either by being arrested for a non-violent possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked where the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment program as provided in subdivision (a). This paragraph will not apply to any parolee who at the effective date of this act has been convicted of one or more serious or violent felonies in violation of Penal Code sections 667.5(c) or 1192.7.

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(D) Where a parolee already on parole at the effective date of this act violates that parole for the second time either by being arrested for a non-violent drug-possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be re-incarcerated.

SECTION 7. Division 10.8 is added to the Health & Safety Code to read:

Division 10.8. Substance Abuse Treatment Funding.

#### 11999.4 Establishment Of The Substance Abuse Treatment Trust Fund.

A special fund to be known as the "Substance Abuse Treatment Trust Fund" is created within the State Treasury which is continuously appropriated for carrying out the purposes of this division.

#### 11999.5 Funding Appropriation

Upon passage of this Act, \$60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000-2001 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$120,000,000 annually for the 2001-2002 fiscal year, and an additional sum of \$120,000,000 in each such subsequent fiscal year concluding with the 2005-2006 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section shall preclude additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

#### 11999.6 Distribution Of Monies From Substance Abuse Treatment Trust Fund

Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the secretary of the Health and Welfare Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing



persons in and providing (1) drug treatment programs under this Act and (2) vocational training, family counseling and literacy training under this Act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this Act other than drug testing services of any kind. Such monies shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this Act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the department director has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

#### 11999.7 Local Government Authority to Control Location of Drug Treatment Programs

Notwithstanding any other provision of law, no community drug treatment program may receive any funds from the Substance Abuse Treatment Trust Fund unless the program agrees to make its facilities subject to valid local government zoning ordinances and development agreements.

#### 11999.8 Surplus Funds

Any funds remaining in the Substance Abuse Treatment Trust Fund at the end of a fiscal year may be utilized to pay for drug treatment programs to be carried out in the subsequent fiscal year.

#### 11999.9 Annual Evaluation Process

The department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs which are funded pursuant to the requirements of this Act. The study shall include, but not be limited to, a study of the implementation process, a review of lower incarceration costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and any other impacts or issues the department can identify.

#### 11999.10 Outside Evaluation Process

The department shall allocate up to 0.5% of the fund's total monies each year for a long term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs which are funded pursuant to the requirements of this Act.

#### 11999.11 County Reports

Counties shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this Act. The department shall promulgate a form which shall be used by the counties for the reporting of this information, as well as any other information that may be required

by the department. The department shall establish a deadline by which the counties shall submit their reports.

#### 11999.12 Audit Of Expenditures

The department shall annually audit the expenditures made by any county which is funded, in whole or in part, with funds provided by this Act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this Act.

#### 11999.13 Excess Funds

At the end of each fiscal year, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund and may spend those funds, if approved by the department, on drug programs that further the purposes of this Act.

### SECTION 8. Effective Date

Except as otherwise provided, the provisions of this Act shall become effective July 1, 2001, and its provisions shall be applied prospectively.

### SECTION 9. Amendment

This Act may be amended only by a roll call vote of two-thirds of the membership of both houses of the Legislature. All amendments to this Act shall be to further the Act and shall be consistent with its purposes.

### SECTION 10. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect

other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.